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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 MAR 23 PM 4:38 ✓

JEANNE HICKS, CLERK

BY: Ivy Rios

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN DEMOCKER,

Defendant

P
#1300CR201001325

)
)
) **REQUEST FOR ACCESS TO THE**
) **CLERK'S "ONBASE" PROGRAM, and**
) **ORDER**

)
)
)
) **(Hon. David Mackey, Warren Darrow)**

The Defendant, by and through Counsel Undersigned, respectfully requests access to the Clerk's OnBase program, in order to comply with the in the Court's March 16, 2011 Order.

The Court's March 16, 2011 Order stated:

"During a comparison of the computerized OnBase records to the paper file, it was discovered that some documents that were 'sealed' had been viewed and, in some cases, printed by persons employed by the Yavapai County Attorney's Office and Yavapai County Victim Services at remote electronic access sites."

The Court then noted that two reports had been prepared by the Clerk, which were "further edited by the Court," and "attached to this Ruling in a sealed envelope."

The Court expressed the opinion that "OnBase remote electronic access that had been authorized to persons employed by the County Attorney's Office ... did not grant the viewing of 'ex parte' and 'sealed' documents in this criminal case."

The Court concluded its opinion on the access / viewing of 'ex parte' and 'sealed' documents on OnBase:

However, given the ongoing nature of this criminal case, the Court has determined that the release of this information to the attorneys involved in this criminal proceeding at this time *is fundamentally necessary* to allow for further investigation by the attorneys as well as further proceedings regarding the impact upon the Defendant's fundamental right to a fair trial. (Italics added).

The Court then gave the Defense 20 days to review the reports and advise the Court whether any other redactions are necessary. However, on March 22, 2011, the Clerk of Court denied access to OnBase to the Defense. She suggested we use the Public Defender's access.

The Defense Attorneys in this case do not work for the Yavapai County Attorney's Office, the Yavapai County Victim Services nor the Yavapai County Public Defender, and therefore do not have access to OnBase. It is necessary that the Defense have access to the *same system* that the Yavapai County Attorney's Office and the Yavapai County Victim Services did. The Defense must be able to view the same documents on OnBase that the Yavapai County Attorney's Office and the Yavapai County Victim Services did. In order to see the documents on OnBase, it must be through the same unfiltered lens that the Yavapai County Attorney's Office and the Yavapai County Victim Services used. When considering the magnitude of the "viewing" and "printing" of the documents, it is necessary to see the title pages of those documents on OnBase, as well as what steps were necessary to view/print the documents.

Without all the information that was already available – viewed and printed – by the Yavapai County Attorney's Office and the Yavapai County Victim Services, any analysis for purposes of redaction would necessarily be incomplete. Due process requires that the Defense have the equal access to the same documents the state has already had access to. The impact upon the Defendant's fundamental right to a fair trial requires a complete analysis – which is not available to the Defense by any other means.

There are only four ways for the Defense to view OnBase:

- 1) At the Yavapai County Attorney's Office. This is out of the question. The Defense must

be free to observe the OnBase database without the watchful eye of the prosecution.

Even if a County Attorney computer was provided without a staff member present, the pages viewed could easily be re-created. The state is not entitled an insider's view of a Defense investigation.

- 2) Yavapai County Victim Services. This is also out of the question. See: #1, *supra*.
- 3) Yavapai County Public Defender. The Public Defender conflicted off of the case. Even if a Public Defender computer was provided without a staff member present, the pages viewed could easily be re-created, without any confidentiality of information.
- 4) The OnBase **public terminal** in the Clerk's Office. This is the worst option, as any viewing of sealed and/or would have to be *done in public*. With eager newspaper interveners seeking the disclosure of these very sensitive documents, that could easily turn into a disaster. In addition, any pages viewed by the Defense could easily be re-created by the next person sitting at the terminal.

The Defense should have equal access to OnBase. In Corbin v. Ybarra 161 Ariz. 188, 194, 777 P.2d 686, 692 (Ariz.,1989), there is a section entitled "Availability of the information."

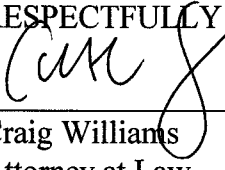
On any consideration of the work product doctrine, we must consider an additional factor: availability of the item sought in discovery. If the information sought is equally available to both parties, it receives the broadest protection. Cf. Hickman, 329 U.S. at 511, 67 S.Ct. at 394. However, if the information sought is unavailable to one of the parties, the work product doctrine may not protect it, *ensuring that both parties have equal access to all information necessary for a fair determination of the case. Id.*

Indeed, the criminal rules explicitly recognize this principle of equal access to information. Rule 15.1(e) (applying to defendants) and Rule 15.2(f) (applying to the state) allow a party to obtain material on a showing of "substantial need" of the material, which the party cannot obtain without "undue hardship." These rules embody the concepts in Hickman. See Comment, Rule 15.1(e) (citing Rule 26(b)(3), Ariz.R.Civ.P., 16 A.R.S.) (embodying Hickman); cf. Rule 26(b)(4)(B), Ariz.R.Civ.P., 16 A.R.S. (allowing a party in a civil case to obtain discovery of information pertaining to non-testifying experts on showing "exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions ... by other means").

(*Id.*, italics added).

Therefore, because the Defense has demonstrated a showing of substantial need to view the documents on OnBase, which the Defense cannot view without a Court Order, it is requested that this Court Order the Clerk of Courts to make a private OnBase terminal available to the Defense, as soon as possible. In addition, the Defense requests an extension of the 20-day deadline imposed by the Court to redact the Reports after access to OnBase.

RESPECTFULLY SUBMITTED on March 23, 2011.



Craig Williams
Attorney at Law

Copies of the foregoing delivered / faxed this date to:
Judges David Mackey and Warren Darrow, Judges of the Superior Court

Copies delivered to:
Greg Parzych, via e-mail.
Joe Butner, Jeff Paupore, Yavapai County Attorney's Office
The Defendant

By  _____